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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 484 of 2004

Date of decision:1.10.2007

Anup Kumar and others ...Appellants

Versus

Ram Chander alias Chander ...Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. B. S. Bedi, Advocate for the appellants.

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RAJESH BINDAL, J.

The plaintiffs are in second appeal before this court against the concurrent findings of fact by both the courts below whereby suit filed by them, for declaration claiming themselves to be owners in possession of the suit property, was dismissed by both the Courts below.

2. The challenge was to the decree dated November 29, 1995 passed against Jagdish Rai, father of the appellants, which was sought to be challenged on the plea of fraud. In the impugned decree, the suit for specific performance filed by respondent/defendant against Jagdish Rai, father of the appellants, was decreed on the basis of admitting written statement filed by him. The primary contention raised by the appellants/plaintiffs in the suit was that he came to know about the decree dated November 29, 1995 only when Jagdish Rai, father of the appellants, received a notice for execution of the decree on March 31, 1997. The decree was result of a fraud played by Shri J. P. Duhan, Advocate to whom Jagdish Rai, father of the appellants had engaged for filing another case in April/May, 1993. For that purpose, Jagdish Rai, father of the appellants/plaintiffs, had given Vakalatnama and signed blank papers to his counsel, which were misused by him for filing written statement in the suit filed by the respondent for specific performance, which resulted in passing

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of the decree against Jagdish Rai father of the appellants/plaintiffs. He submitted that there was no occasion for Jagdish Rai, father of the appellants to have filed written statement admitting the claim of the respondent, in the earlier suit as in the proceedings before the revenue authorities regarding mutation, he was contesting the claim.

3. Having heard learned counsel for the appellants, I do not find any merit in any of the submissions made by him.

4. It is a matter of record that admittedly, the notice of the execution was received by Jagdish Rai, father of the appellants/plaintiffs on March 31, 1997, still he took more than 3-1/2 months to file suit to challenge the alleged decree which according to him was a result of fraud. It is established on record that service in the suit, decree passed wherein is challenged by the appellants/plaintiffs, was duly effected on Jagdish Rai. The registered notice sent in the suit for service of summon was received back with the report of refusal. Thereafter, the notices were duly served on the son of the Jagdish Rai, plaintiff. However, still being not satisfied the Court again sent the summon by registered post, which was duly received by Jagdish Rai, father of the appellants/plaintiffs under his own signature as his acknowledgment Ex. D-17 is on record. This service was effected for November 5, 1992 as date of hearing and it is on that date Shri J.P.Duhan, Advocate has appeared and filed power of attorney on behalf of Jagdish Rai, father of appellants/plaintiffs. Counsel for Jagdish Rai Sh. J. P. Duhan had infact filed power of attorney on his behalf in the earlier suit much before the alleged date on which he was engaged for filing the other suit in April/May, 1993.

5. Infact the appellants/plaintiffs were playing hide and seek from the Court as it established from further fact, namely, that in the application filed by the respondent for correction of Khasra Girdawari before the revenue authorities, it was specifically stated by respondent Ram Chander on November 9, 1994 before the Assistant Collector IInd Grade, Gharaunda about pendency of the civil suit between the parties for enforcing of the agreement to sell. So to state that he came to know about

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pendency of the civil suit and the decree passed therein only after service of notice in the execution proceedings is totally false. The conduct of the appellants even during the course of execution proceedings of the decree also in line with his conduct in the suit, which is narrated by the trial Court in following terms:-

> "At the cost of repetition, it has been stated that all the facts described above, clearly shows that the original plaintiff had the knowledge of Civil Suit No. 915 of 1992 and has been playing hide and seek ever since and an insight has been sought to be given from the execution proceedings pending in the Court where upon notice on 31.3.1997, the plaintiff appeared as JD in the execution application on 5.4.1997 as can be seen from the order dated 5.7.1987 Ex. D-12. On 20.9.1997 the plaintiff/JD got himself proceeded against exparte as can be seen from the copy of the order dated 20.9.97 Ex. D-6. No objection to the execution of decree dated 29.11.1995 Ex. P-13 were filed from 5.4.1997 to 20.9.1997. The plaintiff/JD appeared for the second time when notice under Order 21 Rules 33 and 34 CPC was given as can be seen from the copy of the order dated 31.3.1998 Ex. D-13. Objections Ex. D-7 were filed for the first time on 4.4.1998 and upon the death of Jagdish Rai the original plaintiff on 5.2.1999, Legal Representatives of Jagdish Rai were impleaded on 27.3.1999, as can be seen from the order Ex. D-14. The plaintiff/ JD in his own preferred wisdom got himself proceeded against exparte again on 12.2.2000 as can be seen from the order dated Ex. D-8. None-the-less objections were disposed of by the Executing Court as dismissed and registration of the sale deed through court was ordered and finally the sale deed was executed and

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registered on 14.3.2000 as can be seen from the copy of the order dated 1.4.2000, warrant of possession was ordered for delivery of the possession of the suit property as can be seen from the copy of the order dated 22.9.2001 Ex. D-15 but the L.Rs of the JD and the original plaintiff filed a second set of objections on 3.11.2000 Ex. D 10 on the same grounds taken in the earlier objection petition, only to stop the execution of the warrant of possession and that also on the flimsy ground that the DH has not impleaded the L.Rs of deceased Jagdish Rai, as such already been impleaded."

6. Still further on specific query by the Court as to whether any proceedings were initiated against the counsel by the appellants/plaintiffs for professional misconduct by filing any complaint with the Bar Council or any other authority, the reply was in negative.

7. Besides all these proceedings before the Courts below showing the conduct of the appellants/plaintiffs, which totally belies their claim in the suit, even before this Court as well, the position remains the same, in a case where the claim made by the appellants/plaintiffs is that they have been defrauded. After the judgment and decree by the Lower Appellate Court having been passed against the appellants on September 19, 2003, the appeal was preferred before this court on December 19, 2003 though incomplete, which was re-filed after removal of the objections on January 28, 2004. Thereafter the matter was adjourned on a number hearing starting from April 5, 2004 till August 20, 2007 for more than 3 years on the requests made by the counsel for the appellants to address arguments. However, on August 20, 2007 last opportunity was granted and case was fixed for today.

8. The conduct of the appellant clearly shows that in the suit, the decree passed wherein is being challenged on the plea of fraud, the appellant/plaintiff did not appear inspite of service and further despite specific knowledge of the suit in the proceedings before the revenue

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authorities. Thereafter, the conduct of the appellant/plaintiff during the course of execution proceedings and then before this Court clearly shows that present proceeding is nothing else but a luxury litigation initiated by the appellant/plaintiff with false allegations and accordingly, in my view, the appellant/plaintiff had rightly been non suited by both the Courts below.

Accordingly, I do not find any substantial question of law arises in the present appeal. The findings recorded by both the Courts below are plain and simple findings of fact regarding the plea of fraud, which has not been established.

The appeal is dismissed in limine.

October 01, 2007 **(Rajesh Bindal)**
Pka **Judge**